

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's)
Regulations Governing Broadcast)
Television Advertising)

MM Docket No. 95-90

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REPLY COMMENTS

The undersigned parties representing some forty (40) television stations hereby reply to the comments submitted in the above-captioned proceeding. The initial comments submitted in this proceeding clearly show that the public interest continues to be served by retention of the "network control of station rates" rule, 47 C.F.R. 73.658(h) and the "network-rep" rule, 47 C.F.R. 73.658(i).

INTRODUCTION

Local broadcasters have demonstrated in this proceeding their support for the network-rep rule because it promotes competition between network and national spot advertising -- competition that benefits advertisers, local broadcasters, and the public. This competition is made possible by the independent rep firm, and repeal of the network-rep rule would harm this competition because networks will use their market power to drive many independent rep firms out of business.

What also would be lost if the rule were repealed is the valued independent advice that broadcasters receive from

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independent rep firms. If a network took over this advisory role, then any programming advice given to stations would have to be discounted or second-guessed, and the likely result would be that many broadcasters would "play it safe" and rarely preempt network programming. Consequently, service to community and programming diversity would suffer.

The Commission should give substantial weight to the views of local broadcasters, which the Notice asserts will benefit from repeal of the rule, since these broadcasters unanimously concluded that the rule should be retained on the grounds that it promotes competition and assists them in serving their community. In addition, the Commission should hold a heavy presumption against repeal of the "network control of station rates" rule since that would concentrate pricing power in the hands of one party. In short, affiliates and networks compete in the national television advertising marketplace, and repeal of either rule would hamper that competition.

I. THE RULE SERVES THE PUBLIC INTEREST BECAUSE IT PROMOTES COMPETITION.

Local broadcasters meet the networks in the national television advertising marketplace every day, competing for national advertising dollars. As broadcasters with stations in small and medium-size markets, we have succeeded over the years in obtaining a significant percentage of those advertising dollars because of the ability of broadcasters,

working with independent rep firms, to present an attractive advertising vehicle to national firms seeking to reach a broad audience.

That competition has benefitted advertisers, local broadcast service, and the public. Advertisers benefit because they get more choice and competition on both price and quality of advertising services. Local broadcasters benefit because we receive nearly half of our revenues from national spot advertising. The public benefits because local broadcasters have more revenues to spend on programming, and more importantly, because advertisers realize the gains of a competitive marketplace.

We agree with all the comments filed by other local broadcasters that repeal of the rule would terminate these benefits and not serve the public interest. Repeal of the rule would drive many independent rep firms out of business, because networks have substantial power to persuade affiliates to change their rep firm. We agree with the comments of a number of broadcasters that networks have sufficient power in the market, due to repeal of financial syndication and prime time access rule and long-term affiliation agreements as well as other factors, to force large-scale changes in rep firms.^{1/} The result would be that in a matter of years many

^{1/} See, e.g., Comments of CBS Television Network Affiliates Association and the ABC Television Network Affiliates Association ("Affiliates") at 4-5; Comments of AFLAC Broadcast (continued...)

stations, especially small and medium-size stations, will have no choice but to sign up with the network-owned rep firm.

Without independent rep firms, many local broadcasters will no longer realize the benefit of the aggressive competition between independent rep firms and the networks. Local broadcasters will lose substantial revenues if, as seems almost inevitable, that network-owned rep firms will be less aggressive and creative in selling against the network than independent rep firms currently are. But more important to the public, advertisers will no longer realize the benefit of that competition. As a result, the public would be ill-served by repeal.

In reviewing the comments submitted in this proceeding, it is evident that only the networks would benefit from repeal, for they are the only parties supporting repeal. Since the rule was put in place to limit their behavior, and promote competition against them, their position on repeal is not surprising. What is noteworthy, however, is the unanimity with which local broadcasters and affiliates oppose repeal. In light of the Notice's theoretical assumption that repeal would benefit local broadcasters by, inter alia, lowering their transaction costs, the Commission must give great weight

^{1/}(...continued)
Group, Inc. ("AFLAC") at 8; Comments of MAC American Communications, Inc. at 3.

to the strong position of local broadcasters that repeal would hurt competition and harm their position in the marketplace.

II. THE RULE SERVES THE PUBLIC INTEREST BECAUSE IT PROMOTES DIVERSITY.

The Commission's Notice did not adequately address the important advisory role independent rep firms play in the management of a local station, and because of that we think the Commission undervalues the importance of rep firms.

We agree with the comments by several broadcasters that independent rep firms give local stations crucial advice in programming and business decisions.^{2/} The Affiliates Associations asserted, and we agree, that the independent rep firm's "essential role as objective advisers" is highly valued by local stations because it "is aimed only at furthering the interests of the affiliates and their communities."^{3/} This advice concerns, among other things, the demographic target for the station, positioning of local news in the market, selection of syndicated programming, and preemption of network programming. When local broadcasters currently receive programming advice from an independent rep, they are not forced to discount or second-guess the bona fides of the source. If the rep were network-owned, however, many affiliates would simply choose to "play it safe" and go with

^{2/} See, e.g., Affiliates at 3-4; Comments of Hubbard Broadcasting, Inc. at 4.

^{3/} Affiliates at 4.

the network's feed instead of choosing programming that may be more risky in terms of network relations but more suitable for their community.

This concern is heightened by other recent rule changes regarding network-affiliate relations. Repeal of the prime time access rule and the financial syndication rule creates additional incentives for networks to tilt their advice to gain program clearances. Affiliates already face substantial pressure in dealing with networks on a variety of programming issues, and we agree with several comments that network power is likely to grow over the next several years.^{4/} In this environment, the voice of the independent rep will be more vital since it gives affiliates helpful information on making sound business and programming decisions. If that voice is silenced, and if instead the only voice affiliates hear is from the networks, then the likely result is that the clearances of network programming will go up, and service to the community and programming diversity will go down.

The Commission should give substantial weight to the comments submitted by local broadcasters that independent rep firms assist them in serving their community and contribute to programming diversity. The networks do not seem to contradict this claim, but instead contend that stations can make

^{4/} See, e.g., Affiliates at 5; AFLAC at 3-5.

programming decisions by discounting the advice of a network-owned firm.^{5/} However, that alternative rings hollow against the claim by a broad number of local broadcasters that independent rep firms assist them in meeting their Commission obligation to serve their community.

III. THE "NETWORK CONTROL OF STATION RATES" RULE PREVENTS PRICE FIXING, PROMOTES PRICE COMPETITION.

The "network control of station rates" rule prevents a network from dictating to an affiliate the price for national spot advertising. The rule was first put in place to prevent networks from manipulating station advertising rates as a means of supporting network advertising prices above competitive levels. The rule still serves a purpose today, because the potential for anti-competitive activity still exists.

We agree with the analysis of a number of comments that network advertising and national spot advertising compete directly in the national television advertising marketplace, and are the closest possible substitutes.^{6/} In light of that competition, there must be a heavy presumption against a proposal to put control for pricing of competing services in the hands of a single party. The networks have not submitted any economic or policy argument to overcome this heavy

^{5/} See, e.g., Comments of CBS at 22-24.

^{6/} See Comments of Station Representatives Association at 10-14.

presumption against concentration of pricing power. If the networks had such pricing power, then they could use it to manipulate affiliate rates for national spot time to benefit network advertising. Though some may argue that the networks could not sustain that system, we agree with those parties which conclude that the networks have strong, and growing, power over affiliates and will be able to exercise that power in a variety of ways (if the Commission permits them) to benefit their position.

* * *

For the reasons stated above, the network-rep rule and the "network control of station rates" rule should be retained in their current form.

Respectfully submitted,

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